case at bar. In the present case items of deposit from September 2 to October 31 were received in the usual course of business. There is no evidence that a deposit was built up for the benefit of the bank, and there is no claim made to that effect. Checks were drawn against the deposit account, and the amount of the deposit account varied during the above period from $18,000 to $5,000.

"The cases of Mechanics' & Metals National Bank *v.* Ernst (231 U. S. 60, 34 Sup. Ct. 22, 58 L. Ed. 121), National City Bank *v.* Hotchkiss (231 U. S. 50, 34 Sup. Ct. 20, 58 L. Ed. 115) and In re National Lumber Co. (212 Fed. 928, 129 C. C. A. 448) are cited by counsel for the trustee. But in all these cases the deposits in question were not received in the usual course of business, but were 'built up' or deposited under unusual circumstances, for the express purpose of giving a preference to the bank. The so-called deposits were deposits merely in name, but in fact were payments.

"In the case at bar the referee found:

"'In the present matter there is no circumstance proven which would justify the conclusion that the bankrupt had been accumulating funds on deposit for the purpose of liquidating the bank's debt. On the contrary, every circumstance indicates that the amount to the credit of the bankrupt was a balance resulting from transactions in the usual, ordinary course of business.'

"This distinction between deposits made in the usual course of business, even by an insolvent depositor, and deposits made for the purpose of giving a preference to a bank has been recently emphasized by this court in German-American State Bank *v.* Larimer (235 Fed. 501, ——, C. C. A. ——), the right of setoff being expressly recognized in the former instance but not in the latter."

Contracts—Validity—Agreement to "Stay Away" as Consideration.—The decision of the Supreme Court of Tennessee in Wallace *v.* McPherson (October, 1917, 197 S. W. 565) applies axiomatic principles of law to a rather unusual state of facts. A serious family quarrel is disclosed and a contract was made by a brother (party of the second part) and his wife that they would leave the City of Memphis and Shelby County, Tennessee, "and will not return to the same so long as any one of the parties of the first part (his sisters, brother and brother-in-law) has his or her permanent home in said city." The party of the second part further agreed that he would not visit the parties of the first part save on express invitation, and that he would in no way, either personally, or by letter or messages, or otherwise, harrass, annoy or in any manner communicate with the parties of the first part of either of them. As a consideration for this agreement the parties of the first part agreed to pay the party of the second part and his wife a stated sum monthly during their lives and the life of the survivor, and after death to their son until his majority. It was, however, expressly provided that if

the party of the second part should violate the condition as to remaining away from Memphis and non-communication, all obligation of the parties of the first part should cease.

It appears that the party of the second part, after leaving Memphis, returned to that city "over the energetic protests of the parties of the first part," and that the latter, who had been making installment payments, refused to continue them. The bill was filed to enforce such monthly payments, it being claimed that the condition requiring the party of the second part's removal and absence from Memphis and Shelby County was void as against public policy and must be ignored, but that there was another element, that is, a covenant that he would not make any further claim to any right against his father's estate, which was a sufficient independent consideration for a continuation of the payments.

It seems quite clear that the feature of the contract that was considered most substantial was the exile of the party of the second part from the place where the rest of the family resided. In holding that the buying of peace through the brother's absence was not contrary to public policy, the court said in part:

"Was the condition requiring the removal of George T. Wallace from the City of Memphis and from Shelby County, and his remaining away so long as any of the other parties to the contract maintained their permanent home in Memphis, a void condition? We are of the opinion that it was not void. Any person sui juris may make any contract with another which is not in violation of the Federal or State Constitutions, federal or state statutes, some ordinance of a city or town, or some rule of the common law. There is no provision or rule of either that forbids such a contract or condition, unless the condition fall within that department of the common law which relates to contracts against public policy. Subtracting from the latter term all that concerns obligations contrary to the constitution, statutes and municipal ordinances, and all known rules of the common law other than those applicable to public policy in its more general aspects, there remain only such matters as are contrary to the public morals, the public health, the public safety, or that can be reasonably held from any point of view as inimical to the public welfare. There is indeed no question of the public health or public safety, and, so far as morality is concerned, such an arrangement seems promotive of it. Being promotive of private morals, the safety of individuals comprising a part of the public and the peace of families, it seems to result in a distinct gain to the public welfare. The complainant was by the contract denied residence only in one city and county of Tennessee. Every other county in the state was open to him. He was not required to remove from the state; likewise the time was subject to his own control. He could resume his residence in Shelby County whenever he was willing to forego future payments. There was no forfeiture of

sums previously paid or any possibility of a claim of damages for breach of the contract. The condition imposed had no tendency to deprive complainant of any fundamental right of citizenship. He could vote and perform his other duties to the state as well in any other county as in Shelby. It is true he could not hold office either in Shelby County or in the City of Memphis while residing elsewhere, or vote there; but his change of residence was of his own choice, and by the same volition he could at any time resume that residence, as already indicated, simply by foregoing future payments. For the same reason there was no impairment of his personal liberty. The obligation as to non-residence was not more onerous than one assumes when he contracts with another for a fixed term to serve him for a consideration promised at some place distant from his home, and compliance with which may even necessitate his residence for the time agreed on in a distant state or even in a foreign country. Such a contract may also, in part at least, be assimilated to one wherein a citizen for a valid consideration agrees not to engage in a particular business for a specified time within a defined and limited area. The latter would, in one aspect, be more onerous, since the obligor in such an undertaking could be prevented by injunction from violating the contract, but in a case of the kind we have under examination no injunction could be obtained."

Injunction—Restraining Disclosure of Trade Secrets.—In E. I. Du Pont De Nemours Powder Company *v.* Masland, in the Supreme Court of the United States (May, 1917, 37 Sup. Ct. R. 575), it was laid down that defendant in a suit to prevent the use or disclosure of secret trade processes the knowledge of which was acquired by him while in the plaintiff's employ, may be enjoined from disclosing any of such alleged processes to experts or witnesses produced during the taking of proofs—defendant's counsel being excepted—with leave to move to dissolve the injunction if occasion to consult experts arises. The court said in part:

"This is a bill to prevent the defendant Walter E. Masland from using or disclosing secret processes the knowledge of which was acquired by the defendant while in the plaintiffs' employ. The defendant admits that he intends to manufacture artificial leather, to which some of the plaintiffs' alleged secret processes relate, but denies that he intends to use any inventions, trade secrets or secret processes of the plaintiffs that he may have learned in any confidential relation, prefacing his denial, however, with the averment that many of the things claimed by the plaintiffs are well known to the trade. A preliminary injunction was refused at first (216 Fed. 271). But before the final hearing the defendant proposed to employ one or more experts and to make such disclosures to them as the prepa-